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DATE OF LEASE **SEE PROVISION NO. 2 BELOW**

LEASE NO.

DACA05-5-05-0087

THIS LEASE, made and entered into this date by and between MONTEREY PENINSULA UNIFIED SCHOOL DISTRICT

whose address is 700 Pacific Street, Monterey, CA 93940-2815

and whose interest in the property hereinafter described is that of OWNER

hereinafter called the Lessor, and the UNITED STATES OF AMERICA, hereinafter called the Government:

WITNESSETH: The parties hereto for the consideration hereinafter mentioned, covenant and agree as follows:

- 1. The Lessor hereby leases to the Government the following described premises:**

22,611 rentable SF of classrooms, administrative, multi-purpose and food service space and all adjacent school property known as the Larkin Elementary School, 190 Seeno Street, Monterey, CA

to be used for school purposes by the Government.

- 2. TO HAVE AND TO HOLD the said premises with their appurtenances for the period beginning on**

1 March 2005

through

28 February 2010

subject to termination and renewal rights as may be hereinafter set forth.

3. The Government shall pay the lessor annual rent of \$ 217,068.00 at the rate of \$ 18,089.00 per calendar month. Rent shall be due on the first of the month and payable not later than the last day of the month, and considered late on the fifth of the following month. Any prorated period will be rolled into the next month's payment. Rent payments shall be made by electronic funds transfer (EFT) payable to: Monterey Peninsula Unified School District, 700 Pacific Street, Monterey, CA 93940-2815, by the USACE Finance Center, 5270 Integrity Drive, Millington, TN 38054-5005. In accordance with the Anti-Deficiency Act, Public Law 97-258, as amended, an officer or employee of the United States may not obligate the Government for payment of money exceeding an amount available in an appropriation of funds for the expenditure. Funds for this lease are disbursed to the leasing agency on a quarterly, semi-annual or annual basis. It is the intent of the Government to lease for the period herein stated, however, notwithstanding any other provisions of this lease, the Government retains the right to terminate this lease based upon the lack of appropriated or allocated funds.

4. The Government may terminate this lease for other than the lack of appropriated funds at any time after 36 months from the date of initial occupancy, by giving at least 90 days' notice in writing to the Lessor and no rental shall accrue after the effective date of termination. Said notice shall be computed commencing with the day after the date of mailing.

- 5. This lease may be renewed at the option of the Government for the following terms and at the following rentals:**

DELETED

Provided notice be given in writing to the Lessor at least days before the end of the original lease term or any renewal term; all other terms and conditions of this lease shall remain the same during any renewal term. Said notice shall be computed commencing with the day after the date of mailing.

6. The Lessor shall be responsible for the following:

- a. Payment of taxes and assessments;
- b. Payment of insurance of building and common areas;
- c. Performing school modernization tenant improvements prior to Government occupancy (i.e., completion of ADA accessibility to buildings and restrooms, roofing improvements, installation of standard-size toilets, etc.)
- d. Performing repairs and replacing missing items (i.e., broken window glass, replacing missing window coverings, etc.) that are identified by Government inspectors on the pre-occupancy walk-thru inspection punch list.

The Government shall be responsible for:

1. Payment of monthly utility (gas and electricity) usage fees;
2. Upon written consent from the Lessor, making temporary improvements to the leased premises (such as interior paint, carpet, shatter-resistant film to windows, fire and emergency evacuation alarm systems/hardware, wall partitions, electronic entry access systems, force protection devices around building perimeter, etc.);
3. Maintenance and repair of roof, plumbing and electrical systems, and routine, periodic maintenance of heating and cooling systems to include replacing filters;
4. Providing janitorial services for the building interior;
5. Maintenance of exterior landscaping, watering systems, perimeter fencing, blacktop & playground areas, and parking areas.
6. Performing tenant improvements to modernize classrooms to meet Government tenants' mission needs (i.e., installation of "smart boards", audio equipment, etc.)

FUND CITATION:

7. The following are attached and made a part hereof: The General Provisions and Instructions (Standard Form 2-A, May 1970 edition). General Provision Nos. 17 through 38 are added. Exhibit "A", Site Map is added. Exhibits "B" and "B-1" Scope of Work and Site Map Depicting Scope of Work, are added.

8. The following changes were made in this lease prior to its execution: Provision No. 5 was deleted. General Provision Nos. 1, 2, 4, 23, 26, 28, 32 and 34 of Standard Form 2-A were deleted.

IN WITNESS WHEREOF, the parties hereto have hereunto subscribed their names as of the date first above written.

LESSOR **MONTEREY PENINSULA UNIFIED SCHOOL DISTRICT**

BY _____
DANIEL CALLAHAN, Superintendent

DATE: _____

UNITED STATES OF AMERICA

ACCEPTED BY

(Signature)

(Title)

(Date)

GENERAL PROVISIONS, CERTIFICATION AND INSTRUCTIONS
U.S. GOVERNMENT LEASE FOR REAL PROPERTY
GENERAL PROVISIONS

1. SUBLETTING THE PREMISES.

The Government may sublet any part of the premises by which it is relieved from any obligations under this lease by reason of any such subletting.

2. MAINTENANCE OF PREMISES.

The Lessor shall maintain the demised premises, including the building and any and all equipment, fixtures and appurtenances, furnished by the Lessor under this lease in good repair and in suitable condition, except in case of damage arising from the act or the negligence of the Government's agents or employees. For the purpose of maintaining said premises and property, the Lessor may at reasonable times, and with the approval of the authorized Government representative in charge, enter and inspect the same and make any necessary repairs thereto.

3. DAMAGE BY FIRE OR OTHER CASUALTY.

If the said premises be destroyed by fire or other casualty this lease shall immediately terminate. In case of partial destruction or damage, so as to render the premises untenable, as determined by the Government, the Government may terminate the lease by giving written notice to the Lessor within fifteen (15) days thereafter; if so terminated no rent shall accrue to the Lessor after such partial destruction or damage; and if not so terminated the rent shall be reduced proportionately by supplemental agreement hereto effective from the date of such partial destruction or damage.

4. ALTERATIONS.

Subject to the approval of the Lessor, the Government shall have the right during the existence of this lease to make alterations, attach fixtures and erect additions, structures or similar improvements upon the premises hereby leased, which fixtures, additions or structures so placed in upon or attached to the said premises shall remain the property of the Government and may be removed or otherwise disposed of by the Government.

5. CONDITION REPORT.

A joint physical survey and inspection report of the demised premises shall be made as of the effective date of this lease, reflecting the then present condition, and will be signed on behalf of the parties hereto.

6. COVENANT AGAINST CONTINGENT FEES.

The Lessor warrants that no person or selling agency has been employed or retained to solicit or secure this lease upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by the Lessor for the purpose of securing business. For breach or violation of this warranty the Government shall have the right to annul this lease without liability or in its discretion to deduct from the rental price or consideration, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee. (Licensed real estate agents or brokers having listings on property for rent, in accordance with general business practice and who have not obtained such licenses for the sole purpose of effecting this lease; may be considered as bona fide employees or agencies within the exception contained in this clause.

7. OFFICIALS NOT TO BENEFIT.

No Member of or Delegate to Congress, or Resident Commissioner shall be admitted to any share or part of this lease contract, or to any benefit that may arise therefrom; but this provision shall not be construed to extend to this lease contract if made with a corporation for its general benefit.

8. ASSIGNMENT OF CLAIMS.

Pursuant to the provisions of the Assignment of Claims Act of 1940, as amended (31 U.S.C. 203, 41 U.S.C. 15), if this lease provides for payments aggregating \$1,000 or more, claims for monies due or to become due the Lessor from the Government under this contract may be assigned to a bank, trust company, or other financing institution, including any Federal lending agency, and may thereafter be further assigned or reassigned to any such institution. Any such assignment or reassignment shall cover all amounts payable under this contract and not already paid, and shall not be made to more than one party, except that any such assignment or reassignment may be made to one party as agent or trustee for two or more parties participating in such financing. Notwithstanding any provisions of this contract, payments to an assignee of any monies due or to become due under this contract shall not, to the extent provided in said Act, as amended, be subject to reduction or set-off.

9. EQUAL OPPORTUNITY CLAUSE.

(The following clause is applicable unless this contract is exempt under the rules, regulations, and relevant orders of the Secretary of Labor (41 CFR, ch. 60).) During the performance of this contract, the Contractor agrees as follows:

(a) The Contractor will not discriminate against any employee or applicant-for employment because of race, color, religion, sex, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to, the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; Layoff or termination; rates of pay or other forms of compensation- and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Contracting Officer setting forth the provisions of this Equal Opportunity clause. The Contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the agency Contracting Officer, advising the labor union or workers' representative of the Contractor's commitments under this equal Opportunity clause, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(b) The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.

(c) The Contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the agency Contracting Officer, advising the labor union or workers, representative of the Contractor's commitments under this equal Opportunity clause, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(d) The Contractor will comply with all provisions of Executive Order No. 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(e) The Contractor will furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(f) In the event of the Contractor's noncompliance with the Equal Opportunity clause of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended, in whole or in part, and the Contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order No. 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order No. 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(g) The Contractor will include the provisions of paragraphs (a) through (g) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order No. 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the contracting agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: -Provided, however, That in the-event the Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the contracting agency, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

10. FACILITIES NONDISCRIMINATION.

(a) As used in this section, the term “facility” means stores, shops, restaurants, cafeterias, restrooms, and any other facility of a public nature in the building in which the space covered by this lease is located.

(b) The Lessor agrees that he will not discriminate by segregation or otherwise against any person or persons because of race, color, religion, sex, or national origin in furnishing, or by refusing to furnish, to such person or persons the use of any facility, including any and all services, privileges, accommodations, and activities provided thereby. Nothing herein shall require the furnishing to the general public, the use of any facility customarily furnished by the Lessor solely to tenants, their employees, customers, patients, clients, guests and invitees.

(c) It is agreed that the Lessor’s noncompliance with the provisions of this section shall constitute a material breach of this lease. In the event of such noncompliance, the Government may take appropriate action to enforce compliance, may terminate this lease, or may pursue such other remedies as may be provided by law. In the event of termination, the Lessor shall be liable for all excess costs of the Government in acquiring substitute space, including but not limited to the cost of moving to such space. Substitute space shall be obtained in as close proximity to the Lessor’s building as is feasible and moving costs will be limited to the actual expenses thereof as incurred.

(d) It is further agreed that from and after the date hereof the Lessor will, at such time as any agreement is to be entered into or a concession is to be permitted to operate include or require the inclusion of the foregoing provisions of this section in every such agreement or concession pursuant to which any person other than the Lessor operates or has the right to operate any facility. Nothing herein contained, however, shall be deemed to require the Lessor to include or require the inclusion of the foregoing provisions of this section in any existing agreement or concession arrangement or one in which the contracting party other than the Lessor has the unilateral right to renew or extend the agreement or arrangement, until the expiration of the existing agreement or arrangement and the unilateral right to renew or extend. The Lessor also agrees that it will take any and all lawful actions as expeditiously as possible, with respect to any such agreement as the contracting agency may direct, as a means of enforcing the intent of this section, including, but not limited to, termination of the agreement or concession and institution of court action.

11. EXAMINATION OF RECORDS.

(NOTE.—This provision is applicable if this lease was negotiated without advertising.)

(a) The Lessor agrees that the Comptroller General of the United States or any of his duly authorized representatives shall, until the expiration of 3 years after final payment under this lease, have access to and the right to examine any directly pertinent books, documents papers, and records of the Lessor involving transactions related to this lease.

(b) The Lessor further agrees to include in all his subcontracts hereunder a provision to the effect that the subcontractor agrees that the Comptroller General of the United States or his representatives shall, until the expiration of 3 years after final payment under this lease with the Government, have access to and the right to examine any directly pertinent books, documents, papers, and records of such subcontractor involving transactions related to the subcontract.

12. APPLICABLE CODES AND ORDINANCES

The Lessor, as part of the rental consideration, agrees to comply with all codes and ordinances applicable to the ownership and operation of the building in which the leased space is situated and, at his own expense, to obtain all necessary permits and related items.

13. INSPECTION.

At all times after receipt of Bids, prior to or after acceptance of any Bid or during any construction, remodeling or renovation work, the premises and the building or any parts thereof, upon reasonable and proper notice, shall be accessible for inspection by the Contracting officer, or by architects, engineers, or other technicians representing him, to determine whether the essential requirements of the solicitation or the lease requirements are met.

14. ECONOMY ACT LIMITATION.

If the rental specified in this lease exceeds \$2,000 per annum, the limitation of Section 322 of the Economy Act of 1932, as amended (40 U.S.C. 278a), shall apply.

15. FAILURE IN PERFORMANCE.

In the event of failure by the Lessor to provide any service, utility, maintenance or repairs required under this lease, the Government shall have the right to secure said services, utilities, maintenance or repairs and to deduct the cost thereof from rental payments.

16. LESSOR'S SUCCESSORS.

The terms and provisions of this lease and the conditions herein shall bind the Lessor, and the Lessor's heirs, executors, administrators, successors, and assigns.

CERTIFICATION

1. CERTIFICATION OF NONSEGREGATED FACILITIES.

(Applicable to (1) contracts, (2) subcontracts, and (3) agreements with applicants who are themselves performing federally assisted construction contracts, exceeding \$10,000 which are not exempt from the provisions of the Equal Opportunity clause.) - -

By the submission of this bid, the bidder, offeror, applicant, or subcontractor certifies that he does not maintain or provide for his employees any segregated facilities at any of his establishments, and that he does not permit his employees to perform their services at any location, under his control, where segregated facilities are maintained. He certifies further that he will not maintain or provide for his employees any segregated facilities at any of his establishments, and that he will not permit his employees to perform their services at any location, under his control, where segregated facilities are maintained. The bidder, offeror, applicant, or subcontractor agrees that a breach of this certification is a violation of the Equal Opportunity clause in this contract. As used in this certification, the term "segregated facilities" means any waiting rooms, work areas, rest rooms and wash rooms, restaurants and other eating areas, time clocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees which are segregated by explicit directive or are in fact segregated on the basis of race, color, religion, or national origin, because of habit, local custom, or otherwise. He further agrees that (except where he has obtained identical certifications for proposed subcontractors for specific time periods) he will obtain identical certifications from proposed subcontractors prior to the award of subcontracts exceeding \$10,000 which are not exempt from the provisions of the Equal Opportunity clause; that he will retain such certifications in his files; and that he will forward the following notices to such proposed subcontractors (except where the proposed subcontractors have submitted identical certifications for specific time periods):

NOTICE TO PROSPECTIVE SUBCONTRACTORS OF REQUIREMENT FOR CERTIFICATIONS OF NONSEGREGATED FACILITIES

A Certification of Nonsegregated Facilities must be submitted prior to the award of a subcontract exceeding \$10,000 which is not exempt from the provisions of the Equal Opportunity clause. The certification may be submitted either for each subcontract or for all subcontracts during a period (i.e., quarterly, semiannually, or annually).

NOTE: The penalty for making false statements in offers is prescribed in 18 U.S.C. 1001.

INSTRUCTIONS

1. Whenever the lease is executed by an attorney, agent, or trustee on behalf of the Lessor, two authenticated copies of his power of attorney, or other evidence to act on behalf of the Lessor, shall accompany the lease.
2. When the Lessor is a partnership, the names of the partners composing the firm shall be stated in the body of the lease. The lease shall be signed with the partnership name, followed by the name of the partner signing the same.
3. Where the Lessor is a corporation, the lease shall be signed with the corporate name, followed by the signature and title of the officer or other person signing the lease on its behalf, duly attested, and, if requested by the Government evidence of this authority so to act shall be furnished.
4. When deletions or other alterations are made specific notation thereof shall be entered under clause 8 of the lease before signing.
5. If the property leased is located in a State requiring the recording of leases, the Lessor shall comply with all such statutory requirements at Lessor's expense.

17. Subject to the approval of the Lessor, the Government shall have the right during the existence of this Lease to make alterations, attach fixtures, additions, and/or signs in or upon the premises hereby leased. Such improvements shall be and remain the property of the Government and may be removed prior to the expiration or termination of this Lease. The Government shall not restore, either physically or by payment in lieu thereof, reasonable and ordinary wear and tear, damage by the elements or by circumstances over which the Government has no control, and/or any alterations, or damage thereto, which the Lessor installed and was reimbursed by the Government through payment therefor.

18. (a) By written notice to the Lessor, the Government may terminate the right of the Lessor to proceed under this Lease if it is found, after notice and hearing, by the Secretary of the Army or his duly authorized representative, that gratuities (in the form of entertainment, gifts, or otherwise) were offered or given by the Lessor, or any agent or representative of the Lessor, to any officer or employee of the Government with a view toward securing a lease or securing favorable treatment with respect to the awarding or amending, or the making of any determinations with respect to the performing, of such Lease; provided, that the existence of facts upon which the Secretary of the Army or his duly authorized representative make such findings shall be in issue and may be reviewed in any competent court.

(b) In the event this Lease is terminated as provided in paragraph (a) hereof, the Government shall be entitled (i) to pursue the same remedies against the Lessor as it could pursue in the event of a breach of the Lease by the Lessor, and (ii) as a penalty in addition to any other damages to which it may be entitled by law, to exemplary damages in an amount (as determined by the Secretary of the Army or his duly authorized representative) which shall be not less than three nor more than ten times the costs incurred by the Lessor in providing any such gratuities to any such officer or employee.

(c) The rights and remedies of the government provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or under this lease.

19. It is understood and agreed that the leased premises will be maintained in a clean and sanitary condition, free from pests, and that the Government will provide pest control measures and pesticides that conform to local health department regulations.

20. It is understood and agreed that the Government will assign the demised premises to military personnel in accordance with Executive Order No. 11246 of 24 September 1965, as amended by Executive Order No. 11375 of 17 October 1967, which provides that housing and related facilities shall be available without discrimination among tenants because of race, color, religion, sex, or national origin.

21. It is agreed that the Lessor hereby authorizes the Government, acting by and through the Post or Base Civil Engineer, to determine and provide such necessary repair and/or replacement as may be required by a bona fide emergency, when the owner or agent designated for maintenance herein cannot be contacted after reasonable effort, as determined by said Post or Base Civil Engineer; and it is further agreed that the Lessor will reimburse the Government or contractor of the Government within a reasonable time for any attendant cost incurred through said emergency repair and/or replacement upon presentation of an itemized bill and satisfactory explanation of the necessity for such repair and/or replacement.

22. The Government will make every effort to effect the return of key(s) to the Lessor on or before the date of expiration or termination of this lease. However, it will be the Lessor's responsibility to assure personal entry to the premises by retaining a duplicate set of key(s). The Government will not be liable for further payment of rental beyond the date of termination or expiration due to the fact key(s) were not returned to the Lessor.

23. The use of lead-based paints or paints containing lead-based pigments in the premises shall be in accordance with Public Law 91-695 (42 United States Code § 2601). The Act defines a lead-based paint as any paint containing more than one(1) percent lead by weight in total dry volume of the paint. The prohibition applies where the use lead-based paints or surfaces of exposed components would present a recognized potential hazard to children. The prohibition will not apply on the use of lead-based paints on surfaces of components enclosed in concealed spaces, such as, steel beams in ceilings and in walls.

24. To the extent required by law and regulations, this contract is subject to the procedures of the Contract Disputes

Act of 1978.

25. Provision No. 2 of Standard Form 2 may be changed at the Government's discretion by Supplemental Lease Agreement to reflect the Government's beneficial occupancy of the demised premises. Beneficial occupancy shall be dependent upon the satisfactory completion of all improvements and acceptance thereof by the Government.

26. Regardless of whether the Lessor or the Government shall be ultimately responsible for the cost of maintenance and/or repairs, the Government, will make repairs and/or repairs or arrange to have them made, and the reasonable cost thereof will be borne either by the Lessor or by the Government upon completion of the work in accordance with paragraph 2 of the General Provisions.

27. Any **holdover** of the lease after the expiration of the terms, or any renewal or extension thereof, shall be considered to be a tenancy from month to month, and shall otherwise be on the same terms and conditions as herein specified. Such tenancy shall be terminable by either party on 30 days' written notice to the other party. Any continuance of this lease under the existing terms and conditions is contingent upon the "**availability of funds**". This is based upon the Government's fiscal year which begins October 1 of the current calendar year and ends September 30 of the following calendar year.

28. The Government shall have the option to add or delete square footage from the total leased space, if the addition or deletion is agreeable with the Government and the Lessor. The addition or deletion square foot cost will be calculated from the then current rental rate based on the monthly per square foot figure for the entire leased premises.

29. By **written** notice to the Government, the Lessor will furnish notification of any change of address, ownership of property, name of new Lessor or line of succession, such notice shall be provided at least 45 days prior to said change, and shall be sent to the Government at the following address:

**U.S. Army Engineer District, Sacramento
1325 J Street, ATTN: CESPK-RE-CL
Sacramento, CA 95814-2922**

If the Lessor fails to provide such notice, the Government shall not be liable for any rental paid to the Lessor and/or agent herein specified until such notice is provided and acted upon by the Government.

30. Restoration.

a. The Lessor agrees to waive restoration costs at the termination of this Lease on alterations and improvements that were permitted by the Lessor and paid for by the Government, whether paid for and furnished by the Government during the term of the lease, or paid for by the Government either by lump sum payment and through rental consideration.

b. Prior to or upon termination of this Lease, the Lessor and Government agree to perform an inspection of the leased facilities for the purpose of determining if any restoration will be required by the Government.

c. The Lessor and Government agree that any restoration required by the Government will be limited to the following items and only if damage is caused by the action and fault of the Government and absent normal wear and tear:

- 1) Repair to parking lot pavement or sidewalks caused by placement or removal of force protection barriers.
- 2) Replacement of broken glass (such as windows or fixed viewing glass, glass storefront doors, sidelights, etc.).
- 3) Repair or replacement of broken interior/exterior doors and/or hardware.

It is understood and agreed by the Lessor that restoration will not include any requirements to bring the leased facility up to or meet present code, environmental, seismic, or other pertinent requirements of local, state or federal agencies.

d. The Government retains the right of either paying the Lessor a lump sum for the agreed upon restoration costs or, at the Government's option, having the restoration work performed by qualified personnel. The Lessor agrees to

cooperate with and allow the Government and its contractor to perform the required restoration work.

e. For purposes of defining normal wear and tear, the Lessor acknowledges that the leased premises will be used for Government purposes.

f. It is agreed and understood by the Lessor and Government that any dispute or disagreement under this clause for restoration costs will not cause or obligate the Government to pay any rents required under this Lease beyond the date of termination of this Lease. Said date of termination is defined as the date of termination specified in writing by the Government to the Lessor.

31. The Government's liability under this agreement is subject to the availability of appropriated funds for such payment and nothing contained in this agreement shall be interpreted to require obligations or payments by the United States in violation of the Anti-Deficiency Act; provided that the Government shall otherwise comply with all applicable statutory requirements and its obligation under the terms of this lease. The provisions of this clause are without prejudice to any rights the Owner may have to make a claim under applicable laws for any other damages than provided herein.

32. Any required exit signs, portable fire extinguishers, fire protection networks, such as sprinkler systems and alarms shall be provided and maintained by the Lessor in compliance with fire protection standards established by applicable state statutes, fire regulations, and local ordinances.

33. The Government's liability under this lease for personal injury or property damage is provided for under the provisions of the Federal Tort Claims Act.

34. Performance Requirement. The Lessor agrees to have all initial alterations completed no later than _____. Failure to deliver the space by _____ will result in a penalty equal to one days' rent (\$_____) for each day in which the space cannot be delivered for beneficial occupancy. The resulting penalty will be deducted from the actual cost of initial alterations. Both parties acknowledge that the _____ beneficial occupancy is contingent upon the Lessor's receipt of an "over the counter" building permit from the City of _____. Should the permit process be delayed beyond the standard period for processing permits, the schedule for completion of initial alterations will slip to include the time period necessary for the permit process. Lessor is required to provide the Government a copy of the building permit verifying the actual date of application and date of permit issuance by the City of _____, should an "over the counter" building permit not be possible.

35. Any notices, correspondence, or billing concerns are to be mailed to: U.S. Army Engineer District Sacramento, ATTN: CESPK-RE-CL, 1325 J Street, Sacramento, CA 95814-2922.

36. Emergency Contact: Contact for Army Corps of Engineers during normal business hours is (916) 557-6800 or 557-6809.

37. The Lessor agrees to ensure that the roof, fire sprinkler system, heating and cooling system/units, plumbing and electrical systems, and water heaters are in good working order prior to beneficial occupancy. The Government agrees to perform all maintenance and repair to the leased property during the period of occupancy. Replacement of roof, heating or air conditioning system units and/or water heaters which have been in place for more than 10 years shall be the responsibility of the Lessor. A joint walk through inspection will be performed by the Lessee and the Lessor prior to occupancy, and again prior to lease termination.

38. It is agreed and understood that in the unusual event that School District enrollment trends reverse and a substantial increase in K-5 enrollment occurs, the School District reserves the right to terminate the Lease subject to the following conditions:

- a. In no event may the lease be terminated under this provision during the first three years of the term of the Lease.
- b. Enrollment in grades K-5 must increase by at least 15 percent (15%) 2004 – 2005 enrollment as measured by the CBEDS data, which is currently released in October of each school year.
- c. The District must provide the Government with 12 months' advance notice prior to termination of the lease and surrender of the Premises by the Government tenants under this provision. The notice must contain the actual CBEDS numbers documenting the minimum fifteen percent (15%) increase in K-5 enrollment justifying the early termination.
- d. Upon return of possession of the sites to the School District, the School District must actually use the sites to house K-5 students.

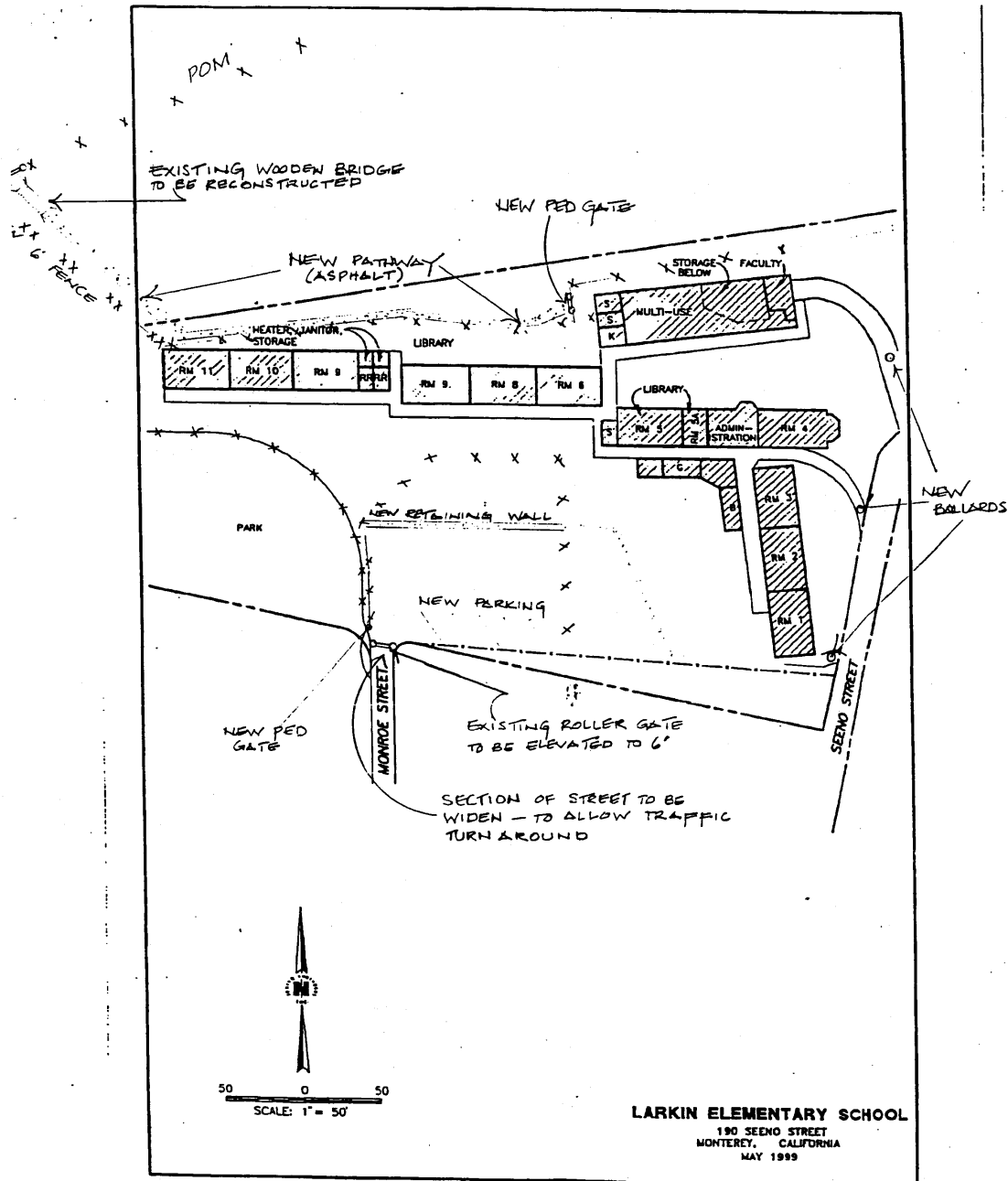


EXHIBIT B-1